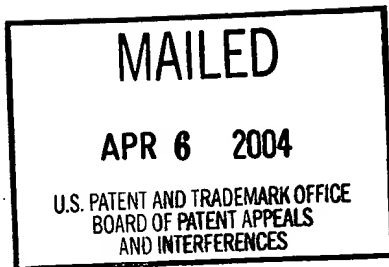


The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 30

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL M. KINZER

Appeal No. 2004-0702
Application 09/292,186

ORDER REMANDING TO EXAMINER

On January 26, 2004, applicant appears to have filed an untimely Reply Brief (Paper No. 29).

In accordance with the revision effective December 1, 1997, Title 37, Code of Federal Regulations, §1.193 states:

(b) (1) Appellant may file a reply brief to an examiner's answer or a supplemental examiner's answer within two months from the date of such examiner's answer or supplemental examiner's answer. See §1.136(b) for extensions of time for filing a reply brief in a patent application and §1.550(c) for extensions of time for filing a reply brief in a reexamination proceeding. The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief. A supplemental examiner's answer is not permitted, unless the application has been remanded by the Board of Patent Appeals and Interferences for such purpose.

Appeal No. 2004-0702
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In addition to the Reply Brief, applicant provides a request for an extension of time under 37 CFR §1.136(a). However, as set forth in 37 CFR § 1.193(b)(1), applicant had to use 37 CFR § 1.136(b) to request an extension of time. Thus, it appears that the Reply Brief is untimely filed.

The examiner, upon receipt of this remand, must determine if the Reply Brief is timely filed. If the examiner determines that it is untimely filed, the examiner needs to inform applicant that the Reply Brief is not entered. If the Examiner decides that the Reply Brief was timely filed, proper response of the Reply Brief is required.

Accordingly, it is

ORDERED that the application is remanded to the Examiner to:

- 1) determine if the Reply Brief filed 1/26/04 was timely filed;
- 2) if untimely, notification to applicant that the Reply Brief was untimely;
- 3) if it was timely filed, proper response of the Reply Brief and;
- 4) for such further action as may be appropriate.

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It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 

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gjh

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